

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH VINCENT KAUTH,

Plaintiff,

v.

TULE RIVER TRIBAL POLICE
DEPARTMENT, et al.,

Defendants.

Case No.: 1:23-cv-01731-KES-SKO (PC)

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS TO DISMISS THIS
ACTION FOR PLAINTIFF'S FAILURE TO
OBEY COURT ORDERS AND FAILURE TO
PROSECUTE**

**ORDER DIRECTING PLAINTIFF TO FILE
FIRST AMENDED COMPLAINT WITHIN
21 DAYS**

Plaintiff Joseph Vincent Kauth is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. RELEVANT BACKGROUND

Plaintiff filed his complaint on December 18, 2023. (Doc. 1.)

On February 21, 2024, the Court issued its First Screening Order. (Doc. 6.) The Court found the complaint fails to state a claim upon which relief can be granted. (*Id.* at 3-6.) Plaintiff was granted leave to file a first amended complaint, curing the deficiencies identified in the order, or, alternatively, a notice of voluntary dismissal, within 21 days. (*Id.* at 6-7.)

On March 21, 2024, when Plaintiff failed to file a first amended complaint or a notice of voluntary dismissal as ordered, this Court issued Findings And Recommendations To Dismiss This Action For Plaintiff's Failure To Obey Court Orders And Failure To Prosecute. (Doc. 8.)

1 The Court found Plaintiff failed to file a first amended complaint or a notice of voluntary
2 dismissal within 21 days. (*Id.* at 2-4.) Objections were to be filed within 14 days of the date of
3 service. (*Id.* at 4.)

4 On April 2, 2024, Plaintiff filed his objections. (Doc. 9.) Plaintiff states his address of
5 record remains unchanged and he did not receive any legal mail following his receipt of the
6 prisoner new case documents and order re consent issued December 18, 2023. (*Id.* at 2.) Plaintiff
7 states he “found” the Court’s screening order and the Findings and Recommendations “online
8 with help of [his] wife” and has submitted a grievance concerning his legal mail. (*Id.* at 3.)

9 **II. DISCUSSION**

10 A review of the docket following receipt of Plaintiff’s objections reveals that the Clerk’s
11 Office inadvertently failed to serve Plaintiff with the Court’s First Screening Order. The Findings
12 and Recommendations were served on Plaintiff on March 21, 2024. Because Plaintiff was never
13 served with the Court’s First Screening Order and could not have complied with that order, the
14 Findings and Recommendations will be vacated. The Court will also direct the Clerk’s Office to
15 serve a copy of the First Screening Order with this order.

16 Plaintiff will be afforded 21 days within which to respond to the screening order by filing
17 a first amended complaint or a notice of voluntarily dismissal.

18 **III. CONCLUSION AND ORDER**

19 For the reasons set forth above, **IT IS HEREBY ORDERED** that:

- 20 1. The Findings and Recommendations issued March 21, 2024 (Doc. 8) are **VACATED**;
- 21 2. The Clerk of the Court is **DIRECTED** to provide Plaintiff with a copy of the First
22 Screening Order (Doc. 6) and a blank amended civil rights complaint form along with
23 this order; and
- 24 3. Plaintiff **SHALL** file a first amended complaint or a notice of voluntary dismissal **no**
25 **later than 21 days** from the date of service of this order.

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IT IS SO ORDERED.

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE